

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

Docket No. GE06-001

IN THE MATTER OF THE MERGER
BETWEEN NORTHWESTERN CORPORATION
AND BBI GLACIER CORP., A SUBSIDIARY
OF BABCOCK & BROWN INFRASTRUCTURE LIMITED

Woods Law Firm
Sioux Falls, SD
November 2, 2006
11:00 o'clock a.m.

DEPOSITION OF

Thomas J. Knapp

APPEARANCES:

Mr. David A. Gerdes
May, Adam, Gerdes & Thompson
Box 160
Pierre, SD 57501
for Northwestern Corporation

Mr. William G. Taylor, Jr.
Woods, Fuller, Shultz & Smith
300 South Phillips Avenue Suite 300
Sioux Falls, SD 57102
for Heartland Consumer Power
District and South Dakota Public
Power Company

INDEX TO WITNESS

Examination

BY Mr. Taylor p. 3

INDEX TO EXHIBITS

Marked for	Offered for
Identification	Evidence

Exhibit 1 p. 10
(Northwestern Corporation and
Affiliates Boards of Directors and
Officers as of October 2, 2006)

Exhibit 2 p. 10
(Northwestern Corporation Organization
Chart as of 8-22-06)

The original transcript of this deposition will
be given to Mr. Taylor after the witness has
read and signed it.

STIPULATION

It is stipulated and agreed by and between
the above-named parties, through their
attorneys of record, whose appearances have
been hereinabove noted, that the deposition of
Thomas J. Knapp may be taken at this time and
place, that is, at the offices of Woods,
Fuller, Shultz & Smith, Sioux Falls, South
Dakota, on the 2nd day of November, 2006,
commencing at the hour of 11:00 o'clock a.m.;
said deposition taken before Jill M. Connelly,
Notary Public within and for the State of South
Dakota; said deposition taken for the purpose
of discovery or for use at trial or for each of
said purposes, and said deposition is taken in
accordance with the applicable Rules of Civil
Procedure as if taken pursuant to written
notice.

THOMAS KNAPP,

called as a witness, being first duly sworn,
testified as follows:

EXAMINATION BY MR. TAYLOR:

Q. State your name for the record, please, and
your home address.

A. Thomas J. Knapp, K-N-A-P-P. Home address is

7116 Darby Road, Bethesda, Maryland 20817.

Q. Tell us a little bit about your background,
Mr. Knapp.

A. Sure. I went to law school. Graduated from
law school and clerked for a Judge in the
Chicago area. After that clerkship I went and
joined the Attorney General's office for the
State of Illinois in the consumer fraud
division and worked there for a while.

Then went to the law office, regional law
office of Burlington Northern Railroad Company,
and stayed in the Chicago regional office until
I think 1985. Then went down to Ft. Worth,
Texas, with Burlington Northern Railroad
Company. Was in their headquarters office
there until 1995.

Left there and joined the law firm of
Paul, Hastings, Janofski & Walker in
Washington, D.C. I was there for three years.
Then I joined the Boeing Company for a couple
years. Came back to Paul, Hastings, and then
joined Northwestern Corporation in 2003.

Q. Where did you graduate from law school?

A. When?

Q. When and where?

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1 A. 1977, Loyola University of Chicago.
 2 Q. Are you an Illinois native, born and raised in
 3 Chicago?
 4 A. Illinois resident, born and raised on the south
 5 side of Chicago.
 6 Q. You said you worked for Paul, Hastings for a
 7 few years and then went to Boeing. Did you go
 8 to the general counsel's office in Boeing?
 9 A. Yes. I was the chief labor lawyer.
 10 Q. From Boeing back to Paul, Hastings?
 11 A. Correct.
 12 Q. What year was that? Do you remember?
 13 A. 2000.
 14 Q. Then three years with Paul, Hastings. Then you
 15 joined NWECC.
 16 A. Joined Northwestern Corporation, correct.
 17 Q. Are you married?
 18 A. Yes.
 19 Q. Children?
 20 A. We have four.
 21 Q. You've probably read the depositions of
 22 Mr. Bird and Mr. Kliewer. In Mr. Bird's
 23 deposition I had some discussions with him
 24 about corporate organization structure and
 25 background, some of which he couldn't answer.

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1 Mr. Gerdes and I sort of informally agreed on
 2 your behalf that you would be the person to
 3 answer those questions.
 4 I'll address -- I'd like to start out by
 5 talking a little bit about the corporate
 6 history of Northwestern Corporation. Do you
 7 know about the corporate history?
 8 A. I'll tell you whatever I remember.
 9 Q. Do you know where Northwestern Corporation in
 10 its current iteration was originally
 11 incorporated?
 12 A. Where it was originally incorporated?
 13 Q. Yes.
 14 A. I don't.
 15 Q. Do you know when?
 16 A. I don't recall when it was originally
 17 incorporated.
 18 Q. Your web site says it was incorporated in
 19 1923. The name then in its original
 20 incorporation was Northwestern Public Service
 21 Corporation. Does that strike you as right?
 22 A. I've heard that before. Correct.
 23 Q. Do you know when Northwestern Public Service
 24 Corporation changed its name?
 25 MR. GERDES: Excuse me, I think it was

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1 Northwestern Public Service Company, was it
 2 not?
 3 MR. TAYLOR: You may be right.
 4 A. I don't remember when it changed its name.
 5 Q. If I want to know about the corporate history,
 6 maybe I should depose the website?
 7 A. The website might be a good place.
 8 Q. Do you know anything about the business
 9 activity of Northwestern Corporation 1987?
 10 A. I don't have any personal knowledge of the
 11 business activity of the company in 1987.
 12 Q. Do you know anything from the corporate legend
 13 what the business activity was in 1987?
 14 A. I don't know what you mean by the corporate
 15 legend, but as I said --
 16 Q. Corporate history from the urban legend in the
 17 hallways of Northwestern Corporation, what the
 18 business activity was?
 19 A. Other than being a utility company, providing
 20 natural gas and electric service in South
 21 Dakota. I don't know if at that time it was in
 22 Nebraska yet.
 23 Q. So what you know is that it was a vertically
 24 integrated utility active in business in South
 25 Dakota in 1987?

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1 A. I don't know in 1987 whether it was a
 2 vertically integrated utility at that time, but
 3 I do know it was providing electric and natural
 4 gas service.
 5 Q. Other than the website, who would be the
 6 person? Is there anybody at Northwestern who
 7 knows the answers to those questions?
 8 A. I don't recall. I don't know if there is or
 9 isn't.
 10 Q. Ever met any old employees, anybody that's been
 11 around since the '40s or '50s?
 12 A. Well, on my staff I used to have a lawyer that
 13 was around for quite some time. I don't know
 14 whether he was around in the '50s or '60s, but
 15 he might have been around in the '60s. But
 16 he's no longer with the company.
 17 Q. That was?
 18 A. Alan Dietrich.
 19 Q. '70s. I think Alan is a little younger than I
 20 am, just barely.
 21 A. I don't remember when he joined the company.
 22 Q. So we won't talk about that very much.
 23 You are the general counsel for the
 24 company.
 25 A. I am.

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1 Q. You head the law department of the company?
 2 A. That's correct.
 3 Q. You're also an officer of the company?
 4 A. That's correct.
 5 Q. Are you a director?
 6 A. No, I'm not.
 7 Q. Are you a director of any of the subsidiaries
 8 of the company?
 9 A. I'd have to refresh my memory by looking at I
 10 think a document that Mr. Gerdes provided to
 11 you, but I believe I'm not a director, other
 12 than of a captive insurance company called Risk
 13 Assurance.
 14 Q. What are you looking at there?
 15 A. I'll hand it over to you.
 16 Q. I don't think I've seen this before. I've seen
 17 a short form of this.
 18 MR. GERDES: I sent it to you by e-mail
 19 about 10 days ago. As a matter of fact, I
 20 copied it off the message that I sent you.
 21 MR. TAYLOR: Really?
 22 MR. GERDES: Yes. Have you seen this?
 23 MR. TAYLOR: No.
 24 MR. GERDES: Both of those documents I
 25 sent to you about 10 days ago by e-mail.

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1 MR. TAYLOR: Really.
 2 MR. GERDES: The message was perhaps that
 3 would shorten up Mr. Knapp's deposition or even
 4 obviate the necessity for his deposition.
 5 MR. TAYLOR: That's kind of troublesome,
 6 because these are many of the questions that
 7 when I told you I was going to perhaps depose
 8 them in writing, these are the answers to
 9 them.
 10 MR. GERDES: That's why. I'm relying on
 11 my memory. Off the record.
 12 (Discussion off the record)
 13 (Knapp Deposition Exhibits 1 & 2 marked for
 14 identification.)
 15 Q. Let's talk a little bit, Mr. Knapp, about the
 16 subsidiaries. Your counsel supplied me with
 17 what's new to me an organizational chart and
 18 list of officers, directors and so forth.
 19 Would you look at Exhibits 1 and 2, please?
 20 Let's look at Exhibit 2 first. Exhibit 2,
 21 is that the organizational chart for
 22 Northwestern Corporation?
 23 A. Yes. That's the current organizational chart
 24 of Northwestern.
 25 Q. Were you the author of that?

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1 A. No.
 2 Q. Somebody on your staff prepared it?
 3 A. Yes.
 4 Q. Who did?
 5 A. It would have been Tammy Lydic. She's on my
 6 staff.
 7 Q. In the general counsel's office?
 8 A. She is.
 9 Q. Did she also write the Summaries 1 through 13
 10 that go with that organizational chart on
 11 Exhibit 2?
 12 A. I believe so.
 13 Q. Now, as this organizational chart is laid out,
 14 did you play any role in the organization of
 15 the corporate structure the way it currently
 16 exists?
 17 A. I don't know what you mean by "play any role."
 18 Q. Well, somebody generally, at least we like to
 19 think that somebody designs an arrangement of
 20 parent and subsidiary corporations with some
 21 idea in mind as to where you're going and why
 22 you get there. Often sometimes it's general
 23 counsel who is involved in some of that.
 24 Were you involved in any of the
 25 decision-making process that led to this

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1 corporate structural layout?
 2 A. I was involved in some aspect of it.
 3 Q. Tell me what that was.
 4 A. The one aspect that I was involved in was
 5 changing the Blue Dot Services entity from what
 6 was called Blue Dot Services, Inc., to Blue Dot
 7 Services, LLC.
 8 I probably was involved with the structure
 9 of Northwestern Investments, LLC, having Blue
 10 Dot Services, LLC, and Blue Dot Capital, LLC,
 11 be second or third -- third or fourth tier
 12 subsidiaries under that sub.
 13 Q. Do you remember when that happened?
 14 A. Blue Dot Services went from a C corp to an LLC,
 15 it was either the latter part of 2005 or the
 16 first part of the first quarter of 2006.
 17 Q. So other than the changes that were made to
 18 that tier, Northwestern Investments, Blue Dot
 19 Services, Blue Dot Capital, the corporate
 20 structure is as you found it when you joined
 21 the company in 2003?
 22 A. No.
 23 Q. It's different than it was then?
 24 A. Correct.
 25 Q. What are the differences?

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1 A. Well, there's quite a few. I don't know if
 2 I'll remember all of them. In 2003
 3 Northwestern Corporation had two significant
 4 subsidiaries, which were Expanets, Inc., and
 5 Blue Dot Services, Inc. Expanets, Inc., no
 6 longer exists. It's been dissolved. Blue Dot
 7 Services, Inc., as I said, was converted from a
 8 C corp to an LLC.
 9 Q. Let's just stop there for one moment.
 10 A. Sure.
 11 Q. The organizational chart you're looking at,
 12 Exhibit 2, is as of August 22, 2006. That's
 13 correct?
 14 A. That's what it says on this Exhibit 2.
 15 Q. Do you know that to be correct?
 16 A. I believe it's a representation of the
 17 organizational structure as of that day.
 18 Q. The Bird deposition, just prior to the Bird
 19 deposition we were supplied with an
 20 organizational structure, and that
 21 organizational structure was marked Exhibit 1
 22 in the Bird deposition. I'm showing you a copy
 23 of it. It was dated December 31, 2005.
 24 I notice that there's a slight difference
 25 in that Netexit, Inc., is no longer shown on

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1 Exhibit 2, and that there are now -- now is
 2 another subsidiary of Northwestern Investments,
 3 LLC, that bears the Blue Dot name.
 4 Is the absence of Netexit on Exhibit 2 to
 5 your deposition, is that indicia of the fact it
 6 was dissolved between '05 and August of '06?
 7 A. Yes. Expanets, Inc., name was changed to
 8 Netexit, Inc. Then Netexit, Inc., was
 9 dissolved in 2006.
 10 Q. And in the Bird deposition, Exhibit 1, it shows
 11 Blue Dot Services, LLC, and now is a subsidiary
 12 to Blue Dot Services, LLC. In Exhibit 2 it
 13 shows Blue Dot Capital, LLC. What's that
 14 about?
 15 A. Well, as I mentioned before, Blue Dot, we
 16 converted Blue Dot Services, Inc., into an LLC,
 17 and the Blue Dot Capital, LLC, I don't believe
 18 was -- I don't remember how Blue Dot Capital,
 19 LLC, came about, frankly.
 20 Q. You don't remember what it's about either?
 21 A. I don't know. I don't remember what Blue Dot
 22 Capital, LLC, is about.
 23 Q. All right. Now, Blue Dot Services, LLC, is
 24 some sort of predecessor to the company that
 25 was in the HVAC business, is it not?

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1 A. Yes.
 2 Q. Is there still an HVAC business, as such?
 3 A. There is no HVAC business within Blue Dot
 4 Services, LLC.
 5 Q. Is there anyplace else within Northwestern's
 6 corporate structure?
 7 A. Is there anything else what?
 8 Q. HVAC business.
 9 A. There is no longer an HVAC business, as it was
 10 constituted under Blue Dot Services, Inc., in
 11 Northwestern anymore.
 12 Q. The old theory of did not Northwestern acquire
 13 a number of independent HVAC businesses and
 14 house them in Blue Dot, and then offer HVAC
 15 business to the public?
 16 A. Blue Dot Services, Inc., acquired those
 17 businesses around the United States, and as you
 18 said, had them as part of the Blue Dot
 19 Services, Inc., family. I don't know whether
 20 -- I don't remember whether the structure was
 21 such that the acquired companies, to the extent
 22 their corporate structure remained, were first
 23 reporting to Blue Dot Capital, LLC, and then
 24 Blue Dot Capital, LLC, was a sub of Blue Dot
 25 Services, Inc., at that time.

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1 I do believe there was an entity between
 2 Blue Dot Services, Inc., and the subs that they
 3 acquired.
 4 Q. Is there any business activity in Blue Dot
 5 Capital or Blue Dot Services today?
 6 A. As I said, I don't remember what Blue Dot
 7 Capital does. But with respect to Blue Dot
 8 Services, the only business activity is the
 9 winding down of Blue Dot Services.
 10 Q. It no longer owns any HVAC businesses?
 11 A. It no longer owns HVAC businesses.
 12 Q. So it's the cleaning up of the tail end of that
 13 business that says current activity now?
 14 A. Yes. The winding down of that business is
 15 what's currently going on.
 16 Q. Now, you also gave me a corporate
 17 organizational -- a listing of officers and
 18 directors, which I think has been marked
 19 Exhibit 1. The chain of parents and
 20 subsidiaries in what I'll call the Blue Dot
 21 line or the Northwestern Investments line on
 22 your organizational chart starts with
 23 Northwestern Corporation, then Northwestern
 24 Investments, then Blue Dot Services, then Blue
 25 Dot Capital. Right?

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1 A. That's how it appears on Exhibit 2.
 2 Q. And you know that to be accurate?
 3 A. I believe that's accurate.
 4 Q. Northwestern Investments, LLC, officers and
 5 directors are also officers and directors of
 6 Northwestern Corporation, are they not?
 7 A. We'll have to take a look. I don't think
 8 that's correct.
 9 Q. Who in the list of Northwestern Investments is
 10 not on the list of officers and directors of
 11 Northwestern Corporation?
 12 A. The officers that are shown on Exhibit 1 for
 13 Northwestern Investments, LLC, are also
 14 officers of Northwestern Corporation.
 15 Q. All right. Northwestern Investments, LLC, the
 16 officers and directors of that company, the
 17 officers and directors of Blue Dot, LLC, answer
 18 to the officers and directors of -- officers
 19 and managers of Northwestern Investments.
 20 Right?
 21 A. Can you repeat that question? I'm sorry.
 22 Q. Yes. It wasn't very well phrased. Let's
 23 strike it and start over again.
 24 Using the management and subsidiary line
 25 in the Northwestern Investments line, Blue Dot

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1 Services, LLC, has a president, treasurer and
 2 secretary, and Blue Dot Capital has a
 3 president, secretary -- president, treasurer
 4 and secretary. They all answer to the officers
 5 of Northwestern Investments, do they not?
 6 A. Well, they answer to the managing member, which
 7 is Northwestern Investments, LLC. Obviously
 8 that managing member has the officers that are
 9 shown on Exhibit 1.
 10 Q. So that managing member of Northwestern
 11 Investments, LLC, is governed by those officers
 12 who are shown on Exhibit 1. Right?
 13 A. Those officers perform the management role of
 14 that LLC, Northwestern Investments, LLC.
 15 Q. Is "governance" the wrong word to use? Is
 16 "management" a better word? What would be
 17 your choice?
 18 A. I would say they manage the business.
 19 Q. Let's go across the lines and talk about Risk
 20 Partners Assurance, Limited. Do you know where
 21 that company is organized?
 22 A. It's organized in Bermuda.
 23 Q. That's your offshore insurance company?
 24 A. That's an offshore captive insurance.
 25 Q. Is that company still active?

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1 A. Yes, it is.
 2 Q. Still in the insurance business, risk
 3 management business?
 4 A. It's still in the risk management business,
 5 right.
 6 Q. Tell me about its business activities. What
 7 does it do?
 8 A. Risk Partners Assurance manages the
 9 liabilities, both the actual liabilities and
 10 potential liabilities that arise out of Blue
 11 Dot and Northwestern Corporation policies. The
 12 Northwestern policy, I believe it is the -- it
 13 was an auto liability policy that Northwestern
 14 had that Risk Partners Assurance manages its
 15 risk. That was for the year -- I believe that
 16 was for the year potentially I think it's
 17 2003.
 18 Blue Dot Services had its worker's comp
 19 auto liability coverage within Risk Partners
 20 Assurance for I think it was 2003-2004, and I
 21 believe they changed to Zurich in 2005.
 22 Expanets also had its auto liability and
 23 worker's comp coverage within the captive. I
 24 don't remember the years. I don't remember
 25 right now whether there's any active claims

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1 still being managed of former Expanets or not,
 2 or whether it's just the potential. I'm
 3 forgetting the exact words we use.
 4 Q. Tail?
 5 A. No, it's not a tail. It's the potential for --
 6 I forget the insurance term right now. But
 7 it's the potential for liability to occur
 8 because the limitation period hasn't expired.
 9 Q. So the company isn't actively in the insurance
 10 business in the sense it's not offering
 11 first-party coverage to Northwestern and
 12 subsidiaries any longer. It's just managing
 13 the historic claims at this point?
 14 A. It's only managing the historic claims and any
 15 potential claims that still are within the
 16 applicable limitation periods for Blue Dot
 17 Services, LLC. I don't remember whether
 18 Expanets is still in there. Then I believe one
 19 year of auto liability policy for Northwestern
 20 Corporation.
 21 Q. Let's go back across the line to the right side
 22 and talk about Montana, Canadian-Montana
 23 Pipeline Corporation on Exhibit 2.
 24 I see in Exhibit 1 it shows that is a
 25 Canadian Federal corporation?

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1 A. It's a Canadian Federal corporation. Right.
 2 Q. What is its business activity?
 3 A. Let me revise the last answer. I think it's
 4 both a Canadian Federal corporation and a
 5 Provincial corporation.
 6 Q. Alberta corporation.
 7 A. In Alberta, Canada, correct.
 8 Q. Tell me its business activity.
 9 A. Its business activity is to manage this natural
 10 gas pipeline that crosses from Alberta into
 11 Montana.
 12 Q. And that's an active business?
 13 A. It is an active business.
 14 Q. Is this an acquired company, someone at
 15 Northwestern Corporation acquired at some
 16 point?
 17 A. It is an acquired company in the sense that it
 18 was a subsidiary of the Montana Power Company,
 19 which then became the Montana Power, LLC, and
 20 Northwestern purchased the ownership, the unit
 21 membership interest in the Montana Power, LLC,
 22 and Canadian-Montana Pipeline Corporation was a
 23 subsidiary of Montana Power, LLC.
 24 Q. We'll get to the corporate structure of the
 25 Montana operation and acquisition in a minute.

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1 For purposes of this question, the
 2 Canadian-Montana Pipeline Corporation came with
 3 the Montana acquisition.
 4 A. It did.
 5 Q. And it's a gas transporter?
 6 A. The pipeline transports natural gas. Correct.
 7 Q. Does Canadian-Montana Pipeline Corporation
 8 offer services to the public, or does it offer
 9 services only to Northwestern and its
 10 subsidiaries?
 11 A. I believe it's only to -- I believe it only
 12 offers services to Northwestern Corporation.
 13 Q. It transports gas from someplace to someplace.
 14 Do you know where those someplaces are?
 15 A. I don't know the hubs.
 16 Q. And how are the earnings of Canadian-Montana
 17 Pipeline Corporation reported? Are they
 18 reported independently in Canada?
 19 A. I don't know whether they're independently
 20 reported in Canada.
 21 Q. Are they reported on Northwestern's
 22 consolidated financial statements?
 23 A. I believe any earnings out of the
 24 Canadian-Montana Pipeline Corporation are
 25 consolidated or within the consolidated balance

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1 sheet of Northwestern Corporation.
 2 Q. Forgive me for asking the same question twice.
 3 My memory isn't what it used to be. You said
 4 that it's your belief that Canadian-Montana
 5 Pipeline Company Corporation provides services
 6 only to Northwestern or its subsidiaries?
 7 A. That's my understanding. I don't believe it
 8 provides any services to any subsidiaries. I
 9 believe it's Northwestern Corporation. It may
 10 or may not provide services to third parties.
 11 I don't recall whether it does or does not.
 12 Q. Who would know the answer to that?
 13 A. Kendall Kliever would have known the answer to
 14 that.
 15 Q. Are there any officers and directors --
 16 officers and/or directors of Canadian-Montana
 17 Pipeline Corporation who are not officers
 18 and/or directors of Northwestern?
 19 A. I'll have to refer to Exhibit 1 to answer
 20 that. There are officers and directors of the
 21 Canadian Pipeline Corporation that are not
 22 officers or directors of Northwestern
 23 Corporation.
 24 Q. And they are Mr. Park and Mr. Hayden and
 25 Mr. Gates. Any others?

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1 A. I believe Mr. Park and Mr. Hayden are not an
 2 officer or directors of Northwestern
 3 Corporation. Mr. Gates is an officer of
 4 Canadian Pipeline Corporation and Northwestern
 5 Corporation.
 6 Q. Do you know in what capacities Mr. Park and
 7 Mr. Hayden served that company?
 8 A. As Exhibit 1 indicates, they are -- Mr. Park
 9 was a director and assistant secretary, and
 10 Mr. Hayden is a director.
 11 Q. Are they also employees of the company? They
 12 work in its day-to-day business?
 13 A. I do not believe Mr. Park or Mr. Hayden are
 14 employees of Canadian Montana Pipeline
 15 Corporation.
 16 Q. Are they employees of Northwestern Corporation
 17 or any of its other affiliates or subsidiaries?
 18 A. I do not believe they are employees of
 19 Northwestern Corporation or any of its subs.
 20 Q. Who are they? That's where I should have
 21 started.
 22 A. They are members of a law firm that sit in the
 23 capacity, as Exhibit 1 indicates, as director.
 24 Mr. Park sits as a director and assistant
 25 secretary, and Mr. Hayden sits as a director.

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- 1 Q. So they are members of a law firm in Canada?
- 2 A. Yes, they are, in Alberta, Canada.
- 3 Q. Is that to qualify the company as a Canadian
- 4 corporation? Does it have to have some
- 5 Canadian directors and officers?
- 6 A. Under Provincial laws, I understand you have to
- 7 have a resident, either one or two residents of
- 8 the province for a provincial corporation
- 9 sitting as directors.
- 10 Q. Save those two gentlemen, the balance of the
- 11 officers and directors are all officers and
- 12 directors of the parent company, also, officers
- 13 and/or directors?
- 14 A. That's correct.
- 15 Q. Before we talk about Northwestern Services,
- 16 let's go over and talk about Clark Fork and
- 17 Blackfoot, LLC.
- 18 A. Okay.
- 19 Q. Clark Fork and Blackfoot, LLC, in some form
- 20 came with the Montana acquisition. Right?
- 21 A. Clark Fork, yes, it did come with the
- 22 acquisition.
- 23 Q. Do you know in what format it came? Did it
- 24 come as a corporation, or has it been
- 25 converted, or was it always an LLC?

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- 1 A. Clark Fork and Blackfoot, LLC, was the Montana
- 2 Power, LLC. It obviously had its name changed
- 3 along the way.
- 4 Q. And some assets trimmed out of it?
- 5 A. Substantially all of the assets and liabilities
- 6 were transferred out of the LLC, which was then
- 7 named as Northwestern Energy, LLC, to
- 8 Northwestern Corporation. Then after that
- 9 transfer it was renamed to Clark Fork and
- 10 Blackfoot, LLC.
- 11 Q. What was the purpose of that?
- 12 A. The purpose of that was to put the utility
- 13 assets up at the parent level.
- 14 Q. And all that was left in Montana Power, LLC,
- 15 was that the original name? Did I have that
- 16 right?
- 17 A. It was called Montana Power, LLC.
- 18 Q. All that was left was the assets associated
- 19 with the Milltown Dam?
- 20 A. What was left in what was then named
- 21 Northwestern Energy, LLC, was the Milltown Dam
- 22 and adjacent real estate, an insurance policy,
- 23 and liabilities obviously associated with the
- 24 dam. And I believe some liabilities associated
- 25 with some then pending lawsuits.

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- 1 Q. See if I've got this right. Montana Power,
- 2 LLC, what is now Clark and Blackfoot, LLC, was
- 3 Montana Power, LLC. You also said Northwestern
- 4 Energy, LLC, played a role in that
- 5 transaction. Was Clark Fork and Blackfoot,
- 6 LLC, ever named Northwest Energy, LLC?
- 7 A. Clark Fork and Blackfoot, LLC, was renamed from
- 8 Northwestern Energy, LLC. Montana Power, LLC,
- 9 became Northwestern Energy, LLC, and was then
- 10 renamed to be Clark Fork and Blackfoot, LLC.
- 11 Q. So there currently -- is there a Northwestern
- 12 Energy, LLC, existing?
- 13 A. No, there is not.
- 14 Q. So it went through two name changes. In the
- 15 course of those -- someplace along the way it
- 16 also lost its assets, except for those
- 17 associated with the Milltown Dam.
- 18 A. Substantially all of the assets and liabilities
- 19 were transferred to Northwestern Corporation.
- 20 It retained certain assets and certain
- 21 liabilities.
- 22 Q. When you say "transferred to Northwestern
- 23 Corporation," you mean to the parent company,
- 24 Northwestern Corporation, or to another
- 25 subsidiary?

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- 1 A. No, to the parent Northwestern Corporation.
- 2 Q. Okay. The officers and directors of Clark and
- 3 Blackfoot, LLC, are all officers and/or
- 4 directors of Northwestern Corporation.
- 5 A. I'll have to refer to Exhibit 1. In looking at
- 6 Exhibit 1, the officers of Clark Fork and
- 7 Blackfoot, LLC, are also officers of
- 8 Northwestern Corporation.
- 9 Q. Let's talk about Northwestern Services
- 10 Corporation. You are both an officer and a
- 11 director of that corporation?
- 12 A. Yes, I am.
- 13 Q. Do you know when that was organized?
- 14 A. Well, I have to refer to Exhibit 1, and it
- 15 appears on Exhibit 1 it was incorporated in
- 16 1997.
- 17 Q. You don't know that to be the case. You know
- 18 that from looking at the exhibit?
- 19 A. Correct.
- 20 Q. Because somebody on your staff, were they
- 21 instructed to find out the year of
- 22 incorporation as they prepared this?
- 23 A. No. This is a document that is part of our
- 24 business records, and it is kept in the
- 25 ordinary course of business and updated as

1 there are changes either in the organizational
 2 structure or there is change in managers -- I
 3 mean the officers or directors of the
 4 corporation or the subsidiaries.
 5 Q. So Exhibit 1 was not prepared for this
 6 litigation. It's an extract from your
 7 corporate records.
 8 A. It was not prepared for this litigation. It
 9 is, as I said, a business record.
 10 Q. Now, as shown on Exhibit 1, Northwestern
 11 Services Corporation resulted from a merger of
 12 some other companies. Do you know anything
 13 about that?
 14 A. I do know that Northwestern Services
 15 Corporation merged with the entities that are
 16 set forth on Exhibit 1.
 17 Q. When did that happen?
 18 A. That would have happened I believe sometime in
 19 2005 or the early part of 2006.
 20 Q. Let's talk about that a little bit. The former
 21 Northwestern Energy Corporation, what was
 22 that?
 23 A. I don't recall what Northwestern Energy
 24 Corporation did.
 25 Q. You don't remember what business it was in?

1 A. I don't remember.
 2 Q. How about Grant, Inc.?
 3 A. Grant, Inc., was an entity that held from time
 4 to time land that was owned by the company.
 5 Also may have made investments, and also -- I
 6 think that was the extent of it. They made
 7 certain investments, and it held land. It held
 8 certain parcels of land.
 9 Q. What kind of land?
 10 A. It was either residential property, or it could
 11 have also held commercial property.
 12 Q. You don't know any of the details?
 13 A. I don't. I know the details of one of the
 14 residential properties, but I don't recall the
 15 details of the commercial properties, if my
 16 memory is serving me right, that it held.
 17 Q. What are the details of the residential
 18 property you remember?
 19 A. It held the residential property that was
 20 formerly owned by the former CEO of
 21 Northwestern Corporation.
 22 Q. Drook's house up in Tomar?
 23 A. It held Mr. Drook's home when he sold it back
 24 to the company.
 25 Q. So does Grant, Inc., use the parking place for

1 property acquired by the corporation for
 2 repurchase of its executives, the properties --
 3 there's a name for that, an acronym for that,
 4 and I can't remember what it is at the moment.
 5 A. Well, I don't know if that's what it did
 6 throughout its existence, but I do know that it
 7 held the Drook property. From my period of
 8 time at Northwestern, that's the only property,
 9 residential property that was sold from an
 10 officer or director back to the corporation.
 11 Q. And where are the Grant, Inc., assets now?
 12 A. The Drook property was sold to a third party.
 13 I don't recall whether Grant, Inc., at the time
 14 of the merger held any other properties.
 15 Q. Northwestern Services Group. What was that
 16 about?
 17 A. I don't recall what Northwestern Services Group
 18 did as its business. I don't recall right
 19 now.
 20 Q. Mr. Bird testified that within Northwestern
 21 Services Corporation there is an entity that
 22 provides some consumer services. I think he
 23 talked about valves and switching or something,
 24 something on that order. Is that Northwestern
 25 Services Group? Does it strike any chords?

1 A. That could have been. There was -- whether
 2 it's that entity or a different one. There was
 3 repair and maintenance, maybe even installation
 4 of furnaces and air conditionings performed on
 5 a limited basis, either in South Dakota and
 6 Nebraska by one of these entities, and I don't
 7 recall whether it was Northwestern Services
 8 Group or not.
 9 Q. So see if I understand this correctly.
 10 Northwestern Services Corporation, if it was
 11 incorporated in 1997, must have existed prior
 12 to the merger. Right?
 13 A. Prior to the merger of these entities shown on
 14 Exhibit 1?
 15 Q. Yes.
 16 A. Yes.
 17 Q. Did it exist in some other name, or was it --
 18 did it merge with these entities and survive as
 19 Northwestern Services Corporation?
 20 A. My best recollection is that Northwestern
 21 Services Corporation was the entity's name.
 22 Q. What was the business purpose for the merger?
 23 A. I believe the business purpose of the merger
 24 was to get the entities that perform services
 25 that were not really core businesses of

1 Northwestern Corporation into this Services
2 Corporation.
3 Q. Into one separate line on your organizational
4 structure?
5 A. Correct. You didn't ask this, but the whole
6 purpose after bankruptcy was to substantially
7 trim down the organizational structure of the
8 company. So part of the -- obviously the
9 business purpose of consolidating and trimming
10 down the structure was to try to fit entities
11 either that didn't have a specific ongoing
12 purpose anymore or had a very limited purpose
13 into other entities of like kind.
14 Q. You said this merger was finalized in this year
15 perhaps?
16 A. As I said, my memory is that it could be in
17 2005 or early part of 2006.
18 Q. Some of the accounting information that has
19 been used in the process of working out the
20 numbers in this case has to do with the
21 accounting -- with the revenue stream from
22 Northwestern Services Corporation.
23 Do you know if there was a revenue stream
24 developed by any of the entities, Northwestern
25 Energy Corp., Grant, Inc., or Northwestern

1 Services Group, that would not have turned up
2 in the 2005 revenue reported for Northwestern
3 Services Corporation?
4 A. I don't have any way of knowing that.
5 Q. Kliewer?
6 A. Yes. Kendall, being our controller, would know
7 that.
8 Q. As it's now cast, Northwestern Services
9 Corporation's officers and directors, there are
10 one or two persons on the list in Exhibit 1
11 that are not officers or directors of
12 Northwestern Corporation, the parent. Right?
13 A. In reviewing Exhibit 1, I believe there are two
14 individuals that are listed as officers of --
15 officer and a director of Northwestern Services
16 Corporation that are not an officer or director
17 of Northwestern Corporation.
18 Q. That would be Mr. Sydow and -- I'm sorry, I
19 don't know if LaFave is.
20 A. That's the correct pronunciation.
21 Q. Mr. LaFave?
22 A. Yes.
23 Q. What do Mr. Sydow and Mr. LaFave do
24 respectively? Are they employees of
25 Northwestern Corporation?

1 A. They are employees of Northwestern
2 Corporation.
3 Q. Do they serve on this board for any particular
4 reason?
5 A. Yes. They serve obviously for a reason. Mike
6 Sydow has operations responsibility in South
7 Dakota, and I believe some -- also has
8 operation responsibility in Nebraska.
9 Bleau LaFave has responsibility over asset
10 management, wherever the assets are held by the
11 company.
12 Q. Asset management for Northwestern Services
13 Corporation.
14 A. He has that responsibility.
15 Q. Does he have other roles in Northwestern
16 Corporation?
17 A. He has asset management responsibilities in
18 Northwestern Corporation.
19 Q. As a whole.
20 A. As a whole.
21 Q. Does he have a title, other than the vice
22 president of operations? Does he have a title
23 with Northwestern Corporation?
24 A. He does, but I don't recall what it is right
25 now.

1 Q. Like asset manager or something?
2 A. I don't recall. I think his title was changed
3 recently. I don't recall what it is.
4 Q. Is he on this board because he's active in the
5 day-to-day operations of Northwestern Services
6 Corporation?
7 A. Yes. He would be active in the operations of
8 that corporation, as well as Mr. Sydow.
9 Q. Is Mr. Sydow, in effect, the general manager or
10 the person who runs Northwestern Services
11 Corporation on a day-to-day basis?
12 A. I don't know that.
13 Q. Does he have duties, Mr. Sydow have duties and
14 roles other than with Northwestern Services
15 Corporation?
16 A. Yes, he does.
17 Q. He works -- what's he do for the larger
18 company?
19 A. As I said, he's the operations person for South
20 Dakota and Nebraska.
21 Q. What does Northwestern Services Corporation do
22 in South Dakota and Nebraska?
23 A. Well, as I mentioned before, Northwestern
24 Services Group performed these limited service
25 repair installation, maybe removal of some

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1 heating and air conditioning units.
 2 Northwestern Services Group I believe also
 3 handles the Nebraska capacity, buys and sells
 4 capacity of natural gas pipeline. There may be
 5 other business aspects that I don't recall
 6 right now.
 7 Q. You said Northwestern Services Group. Are you
 8 distinguishing that from Northwestern Services
 9 Corporation?
 10 A. No, I'm not. I used the old name that was
 11 merged into Northwestern Services Corporation.
 12 Q. So is your answer that Northwestern Services
 13 Corporation provides certain activities in
 14 South Dakota and Nebraska related primarily to
 15 gas? Is that what you were saying?
 16 A. Northwestern Services Corporation provides its
 17 business is both in South Dakota and Nebraska.
 18 As I mentioned before, part of its business is
 19 certainly the purchase and sale of capacity of
 20 a natural gas pipeline in Nebraska. I think we
 21 were -- the corporation was getting out of the
 22 business of repairing and installing and
 23 removing heating and air conditioning units.
 24 Q. I'm asking just about Northwestern Services
 25 Corporation. I'm not asking about the business

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1 of its subsidiaries.
 2 A. That's right. That's what I was responding
 3 to.
 4 Q. So Northwestern Services Corporation for itself
 5 may still do some repairing, refitting and so
 6 forth.
 7 A. May or may not. I don't recall.
 8 Q. And it manages some pipeline capacity, gas
 9 pipeline capacity in Nebraska?
 10 A. Yes. I believe so.
 11 Q. What pipeline is that?
 12 A. I don't recall where it starts and where it
 13 ends in Nebraska.
 14 Q. Is it the pipeline that runs from the east-west
 15 main line in Nebraska north up to the three
 16 cities and one town that Northwestern services
 17 with natural gas?
 18 A. It may or may not be. I don't recall at this
 19 time.
 20 Q. So it provides some service work and it manages
 21 the capacity of that pipeline. Does it own the
 22 pipeline?
 23 A. I don't know. I don't remember if it owns the
 24 pipeline or not.
 25 Q. Who knows the answers to these questions?

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1 A. Well, I would think Kendall Kliever would have
 2 a pretty good understanding of the business of
 3 Northwestern Services Corporation.
 4 Q. So you know of those two activities. You don't
 5 know of any others besides those two?
 6 A. I don't recall any other activities now. As I
 7 said, of Northwestern Services Corporation?
 8 Q. Yes.
 9 A. Well, as I mentioned before, Grant, Inc., which
 10 merged into Northwestern Services Corporation,
 11 held land, and it did so this year up until the
 12 sale of that residential property to a third
 13 party.
 14 It might also have held investments, as I
 15 said before. I don't know whether those
 16 investments were liquidated in 2005 or 2006 and
 17 whether Northwestern Services Corporation holds
 18 any other investments. I don't recall, as I
 19 said, what other services or businesses
 20 Northwestern Services Corporation does.
 21 Q. So if it held any investments, what type of
 22 investments did it hold?
 23 A. It held a -- I believe it held an interest in a
 24 commercial property. I don't recall now the
 25 nature of that commercial property. It was not

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1 a -- I don't recall the nature of the
 2 commercial property right offhand now.
 3 Q. Any other investments that you remember?
 4 A. I think it held interest in multiple commercial
 5 properties, but I don't recall what they were.
 6 Q. And you think those multiple commercial
 7 property investments were liquidated either at
 8 the end of '05 or this year in '06?
 9 A. Yes, I believe they were.
 10 Q. You don't remember which?
 11 A. I don't recall which, whether it was late in
 12 2005 or early part of 2006.
 13 Q. Were those left over from pre-bankruptcy days?
 14 A. Yes, they were.
 15 Q. Sold and disposed of for cash?
 16 A. They were sold for cash. Correct.
 17 Q. Do you remember where the properties were
 18 located?
 19 A. I don't remember where they were located.
 20 Q. Who would know that? Kliever?
 21 A. Kendall would know that.
 22 Q. Is Northwestern Services Corporation a South
 23 Dakota corporation to your knowledge?
 24 A. Based on what Exhibit 1 says, it's a South
 25 Dakota corporation.

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1 Q. Let's talk about the subsidiaries of
 2 Northwestern Services Corporation. The first
 3 one on the left-hand side, Nekota Resources,
 4 Incorporated. You're an officer of that
 5 company and a director?
 6 A. Yes, I am.
 7 Q. What's it do?
 8 A. I believe Nekota Resources either owns or
 9 manages a gas pipeline in Nebraska.
 10 Q. Which gas pipeline is that?
 11 A. I don't recall.
 12 Q. Would that be the one we were talking about
 13 earlier that goes from the main line up to the
 14 Cities?
 15 A. I don't recall.
 16 Q. Who knows the answer to that?
 17 A. I think Kendall would -- Kendall Kliewer may
 18 know the answer to that.
 19 Q. The officers and directors of Nekota Resources
 20 are the same as the officers and directors of
 21 Northwestern Services, save Mr. LaFave?
 22 A. Based on Exhibit No. 1, I believe that's
 23 correct.
 24 Q. Do you know Nekota Resources to also be a South
 25 Dakota corporation?

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1 A. Exhibit No. 1 indicates it's a South Dakota
 2 corporation.
 3 Q. What does Nekota Resources do to make money?
 4 Perhaps I should say to produce revenue.
 5 A. I believe, again, it's -- it either purchases
 6 or sells, both purchases and sells capacity on
 7 that pipeline. I don't recall whether it was
 8 in the commodity business at one time or not,
 9 but I believe it's now strictly in the capacity
 10 side of the business.
 11 Q. Tell me what the word "capacity" means in your
 12 vernacular.
 13 A. Capacity would mean the amount of volume that
 14 could pass through the pipeline.
 15 Q. Are you talking about the volume of natural
 16 gas, or are you talking about the volume of the
 17 line itself?
 18 A. It would be the volume of the pipeline.
 19 Q. So it owns the pipeline, and it rents space on
 20 its pipeline to persons who want to transport
 21 gas?
 22 A. As I said before, I don't recall whether it
 23 owns it or not. I do know that it -- I believe
 24 it engages in the purchase and sale of
 25 capacity.

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1 Q. Do you know what Manning's equation is?
 2 A. I do not.
 3 Q. In the electrical business there's a difference
 4 between the common definition of the word
 5 "capacity," which would be like the capacity
 6 of this water glass to hold water.
 7 In the gas business does the word
 8 "capacity," when you're talking about a
 9 pipeline, mean the capacity of the pipeline to
 10 hold gas that's passing through it? Is that
 11 what we're talking about?
 12 A. I don't know if I have the familiarity to say
 13 whether it does or doesn't.
 14 Q. Well, you used the word "capacity."
 15 A. Correct.
 16 Q. You said it buys or sells capacity on the
 17 pipeline.
 18 A. Right.
 19 Q. So you think maybe it buys space from somebody
 20 else that owns the pipeline and remarkets that
 21 space to some third person?
 22 A. It may or may not. As I said, my understanding
 23 of what Nekota Resources is it buys and sells
 24 capacity on the pipeline.
 25 Q. All right.

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1 A. I know that may be funny to you, but that's
 2 what I understand it to be.
 3 Q. That isn't what's funny to me. That's for
 4 another moment.
 5 Are you deferring to Mr. Kliewer to best
 6 explain the business activities of the company?
 7 A. I'm not deferring to him. You asked me before
 8 whether Mr. Kliewer would know the business
 9 activities of Nekota Resources, and I said he
 10 might.
 11 Q. Who else would know if Mr. Kliewer or you
 12 don't?
 13 A. Well, right now I don't recall who else would
 14 know.
 15 Q. Do you know who Nekota Resources' customers
 16 are?
 17 A. I do not know, or I don't recall, I should
 18 say. I don't recall who the customers are.
 19 Q. Did you ever know who their customers, who the
 20 company's customers are or were?
 21 A. I believe in conversations when Nekota
 22 Resources is discussed, the customers are
 23 named, but I don't recall who they are.
 24 Q. You don't remember any of those names?
 25 A. I don't remember who they are.

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1 Q. Would Northwestern Corporation be one of its
 2 customers?
 3 A. As I said, I don't remember who they are.
 4 Q. Sitting here today, you have no recollection of
 5 anybody who does business with Nekota
 6 Resources, Incorporated?
 7 A. As I said before, I don't remember who they
 8 are.
 9 Q. So the answer to my question is, yes, you have
 10 no recollection?
 11 A. As I said, I have no recollection or memory of
 12 who the customers are.
 13 Q. Let's cross over the line then and talk about
 14 -- wait a minute. Let's go back to Nekota
 15 Resources. Did Nekota Resources hold directors
 16 meetings?
 17 A. Nekota Resources does hold directors meetings.
 18 Q. Have you ever attended them?
 19 A. I have.
 20 Q. When is the most recent one you recall?
 21 A. It would have been in 2006, but I don't recall
 22 when.
 23 Q. Sometime this year.
 24 A. Sometime in 2006, correct.
 25 Q. Where was the meeting held?

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1 A. I was on a telephone conference. I believe
 2 there were some people located in Sioux Falls,
 3 South Dakota, and I don't know where the other
 4 people on the phone call were located.
 5 Q. Who was on the conference? Do you remember?
 6 A. My best memory is that most of the directors
 7 and officers were on the conference call, but I
 8 don't remember specifically who.
 9 Q. Who among the list of directors on Exhibit 1
 10 office in Sioux Falls?
 11 A. Of the directors?
 12 Q. Officers and directors is my question.
 13 A. On Exhibit 1 the directors that office in
 14 Sioux Falls would be Mr. Hanson, Mr. Bird. I
 15 have an office in Sioux Falls. Mr. Kliewer,
 16 Mr. Evans, Miss Lydic, Mr. Young, Miss Ng.
 17 Q. It just happens when the annual meeting --
 18 strike that. Was it the annual meeting you
 19 recall attending?
 20 A. As I said, I recall we had a directors
 21 meeting. We may even have had two this year.
 22 I don't recall when they were offhand. It
 23 could have been an annual meeting, as well. I
 24 don't recall.
 25 Q. Of the officers and directors who don't office

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1 in Sioux Falls, and I think you said Mr. Pohl,
 2 where does he office?
 3 A. Mr. Pohl offices in Montana, Butte, Montana.
 4 Q. And Mr. Sydow?
 5 A. I believe he offices in Huron, South Dakota.
 6 Q. So everybody offices in Sioux Falls, save
 7 Mr. Pohl and Mr. Sydow, Montana, Huron,
 8 respectively.
 9 A. That's correct.
 10 Q. Where is your principal duty station?
 11 A. I guess you could -- my principal station is
 12 Sioux Falls, South Dakota.
 13 Q. You live in Maryland?
 14 A. I do.
 15 Q. And you have an office in Washington, D.C.?
 16 A. I do.
 17 Q. How many days a week do you spend in South
 18 Dakota in 2006?
 19 A. I don't recall how many days I spent in
 20 Sioux Falls, South Dakota.
 21 Q. More than a hundred?
 22 A. As I said, I don't recall.
 23 Q. More than 50?
 24 A. As I said, I don't recall.
 25 Q. You came in last night, your lawyer told me on

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1 the phone. When was the last time you were
 2 here before yesterday?
 3 A. The last time I was in Sioux Falls?
 4 Q. Yes.
 5 A. Would have been two weeks ago, I believe.
 6 Q. Do you spend the majority of your time in your
 7 office in Washington, D.C.?
 8 A. I wouldn't say majority of the time, no.
 9 Q. How would you characterize it?
 10 A. I would say it's wholly intermittent the number
 11 of days I spend in Washington, D.C.
 12 Q. So you can't characterize it with a number?
 13 A. I couldn't characterize with a number.
 14 Q. How about an approximate number for the year
 15 2006?
 16 A. Well, we haven't completed year 2006 yet.
 17 Q. So far to date.
 18 A. I would probably say 50 percent of the time is
 19 in D.C.
 20 Q. Is that typical of 2005, also?
 21 A. No. It would not have been typical of 2005.
 22 Q. Characterize 2005 for me.
 23 A. I probably spent 25 to 35 percent of my time in
 24 D.C.
 25 Q. The rest of the time in Sioux Falls?

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1 A. No.
 2 Q. Traveling.
 3 A. It would have been traveling throughout the
 4 U.S.
 5 Q. How much of your time -- character for me how
 6 much of your time you think, an approximation
 7 of how much of your time you spent in
 8 Sioux Falls in 2005.
 9 A. I don't know if I could give a percentage.
 10 Maybe around 20, 25 percent.
 11 Q. Do you have a house here, an apartment?
 12 A. I do not.
 13 Q. Stay in a hotel when you come?
 14 A. I do.
 15 Q. Who is responsible for the day-to-day
 16 operations of Nekota Resources, Incorporated?
 17 Who runs the company?
 18 A. It would be my understanding Mike Sydow would
 19 be responsible for the day-to-day operations.
 20 Q. Let's go across the line and talk about
 21 Northwestern Energy Development, LLC. That
 22 would be on the third page of Exhibit 1. What
 23 is its business?
 24 A. Well, as Exhibit 2 indicates, it holds interest
 25 in a limited liability energy investments in

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1 Montana.
 2 Q. Does it do anything else?
 3 A. I don't recall if it does or doesn't.
 4 Q. You don't recall or you don't know?
 5 A. I don't recall.
 6 Q. So is Northwestern Energy Development a holding
 7 company?
 8 A. It could be characterized as a holding
 9 company.
 10 Q. That's because its principal activity is to
 11 hold ownerships in other companies?
 12 A. It holds ownerships in other companies. It's
 13 the managing member of other LLCs.
 14 Q. Is that its principal business activity?
 15 A. I believe that's its principal business
 16 activity.
 17 Q. And the interests it owns are in the three
 18 companies shown on Exhibit 2, Northwestern
 19 Energy, Northwestern Generation, Montana
 20 Megawatts?
 21 A. Well, it's the managing member of Northwestern
 22 Energy Marketing, LLC, and the managing member
 23 of Northwestern Generation I, LLC.
 24 Q. Again, the officers and directors of -- the
 25 officers of Northwestern Energy Development,

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1 LLC, are all either officers or directors of
 2 Northwestern Corporation. Right?
 3 A. On Exhibit 1 the officers of Northwestern
 4 Energy Development, LLC, are also officers of
 5 Northwestern Corporation.
 6 Q. Let's talk about Northwestern Energy Marketing,
 7 LLC. You're the senior vice president. What
 8 does that do? I'm sorry, you're the
 9 secretary. What does that company do?
 10 A. That company, my recollection is that it holds
 11 a market power license, and I believe that its
 12 principal activity is to hold that license.
 13 Q. It has a trading license?
 14 A. It has a trading license. Correct.
 15 Q. Is it active in the trading business?
 16 A. No, it's not.
 17 Q. So it holds a license and does nothing?
 18 A. It holds a license is not active in the trading
 19 business.
 20 Q. Have any other activity other than to hang on
 21 to that trading license?
 22 A. I don't recall if it does.
 23 Q. You don't recall or you don't know?
 24 A. I don't recall.
 25 Q. Did it produce any revenue in 2005?

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1 A. I don't recall if it does.
 2 Q. How about Northwestern Generation I, LLC? What
 3 is that?
 4 A. Northwestern Generation I, LLC, holds some real
 5 estate in Montana.
 6 Q. On the west side of the river in Great Falls?
 7 A. I believe so.
 8 Q. Where the ill-starred Montana Megawatts
 9 generation facility was going to be
 10 constructed? Is that the property?
 11 A. As I said, it holds real estate in Montana.
 12 Q. That's all you know about the real estate is
 13 that it holds it?
 14 A. It holds the real estate in Montana, and the
 15 real estate will be conveyed from Northwestern
 16 Generation to Montana Megawatts for purposes of
 17 selling the unit membership interests in the
 18 Montana Megawatts to a third party.
 19 Q. Have you ever seen the property?
 20 A. I have not.
 21 Q. Is it under contract for sale now?
 22 A. It is.
 23 Q. Tell me about that.
 24 A. Tell you about the contract for sale?
 25 Q. Sure, just in a general way.

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1 A. Well, Montana Megawatts is being sold to a
 2 third party, and that third party is I believe
 3 planning to develop a generation facility in
 4 Montana.
 5 Q. Montana Megawatts, LLC, is being sold to a
 6 third party?
 7 A. Montana Megawatts I, LLC, is being sold.
 8 Q. Montana Megawatts I, LLC, does that own the
 9 generation device?
 10 A. It did. Generation equipment was sold I
 11 believe the early part of 2006.
 12 Q. To whom? Do you remember?
 13 A. I don't recall who it was sold to.
 14 Q. To the same company or persons who is acquiring
 15 Montana Megawatts I, LLC?
 16 A. I don't recall.
 17 Q. You don't know if it's the same?
 18 A. I don't recall if it's the same.
 19 Q. You didn't handle the deal?
 20 A. No.
 21 Q. Somebody in your staff did?
 22 A. Yes, they did.
 23 Q. So far all practical purposes, Northwestern
 24 Generation I, LLC, and Montana Megawatts I,
 25 LLC, will either be sold or barren of assets

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1 sometime in the near future?
 2 A. Montana Megawatts I, as I said, the unit
 3 membership interest will be sold. Prior to the
 4 sale Northwestern Generation I will convey the
 5 real estate it holds for purposes of that sale
 6 to Montana Megawatts I, LLC.
 7 If Northwestern Generation I, LLC, does
 8 not hold any other real estate, either it will
 9 be dissolved or collapsed into Northwestern
 10 Energy Development, LLC.
 11 Q. What will happen to the money it realizes from
 12 the sale of its assets?
 13 A. I don't know what you mean by that.
 14 Q. What happens to the money? Where does it go?
 15 A. The money that is -- the money that Montana
 16 Megawatts I receives for the sale obviously
 17 goes to Northwestern Generation I, LLC, and I
 18 assume at that point there will be some meeting
 19 held for purposes of distributing that money to
 20 another source.
 21 Q. Which would be Northwestern Energy Development,
 22 since its the sole owner and managing member.
 23 Right?
 24 A. It would go up to Northwestern Energy, LLC.
 25 Q. Just for the record, what is the purpose? Why

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1 does the company have all these subsidiaries?
 2 A. There's obviously purposes for all the
 3 different subsidiaries noted on Exhibit 1 and
 4 on Exhibit 2.
 5 Q. What are the purposes? Is there a different
 6 purpose for each one?
 7 A. Do you want me to read them off Exhibit 1 and
 8 Exhibit 2?
 9 Q. I want to know about the purposes. I don't
 10 want to know the names of the companies. I
 11 asked you in a general way what is the purpose
 12 of the company having these subsidiaries?
 13 What's the overall strategy, corporate strategy
 14 for having subsidiaries rather than -- having
 15 all these assets incorporated into the parent
 16 company, Northwestern Corporation?
 17 A. Well, I don't know what the strategy was,
 18 because these are entities that most of them
 19 were in existence before I came on board to the
 20 company.
 21 But typically you have the strategy of
 22 incorporating or having an LLC to hold -- to
 23 either conduct specific business or hold a
 24 specific asset or assets, and have that entity
 25 perform those services related to the assets or

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1 whatever business it's conducting.
 2 Q. There are some other reasons, also. Like, for
 3 example, bankruptcy protection would be one.
 4 Wouldn't it?
 5 A. Well, I don't know if that is a reason you
 6 would form a company initially. It may or may
 7 not be the result of how that entity performs
 8 over time.
 9 Q. For example, if a company is going to enter
 10 into a business that it's not familiar with or
 11 has some other risks associated with it, they
 12 may park that business in a subsidiary to
 13 protect the parent corporation's assets from a
 14 failure of that subsidiary. Right?
 15 A. That certainly could be a reason you would do
 16 it.
 17 Q. Is that a reason that's extant with respect to
 18 any of these subsidiaries?
 19 A. Like I said, I don't know what the strategy was
 20 when these things were formed, when these
 21 entities were formed, since I wasn't here. But
 22 with respect to the entities ongoing, I don't
 23 see that -- I don't believe any of them are in
 24 a situation which there is any concern about
 25 bankruptcy.

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1 Q. Sometimes subsidiaries are formed for the
 2 purposes of management impact, are they not?
 3 A. I don't know what you mean by that.
 4 Q. A particular business requires a particular
 5 skill set for management, so you form a
 6 subsidiary and put that business in the
 7 subsidiary, and you put those persons with that
 8 management skill set in the subsidiary. Much
 9 like Blue Dot Services when it was in the HVAC
 10 business was a subsidiary.
 11 Isn't that another business reason for
 12 organizing subsidiaries?
 13 A. Yes. I think that's the reason I spoke to
 14 before, that the entity is formed to hold
 15 specific assets or specific businesses.
 16 Q. There may be tax or accounting reasons that go
 17 with the formation of a subsidiary, also.
 18 Right?
 19 A. There may be tax or accounting reasons for
 20 formation of a specific sub or whether it's a
 21 C corp or LLC.
 22 Q. There may be regulatory reasons, also.
 23 Correct?
 24 A. There may also be regulatory reasons to have a
 25 subsidiary.

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1 Q. Give me an example of a regulatory reason.
 2 A. Well, you may have in a subsidiary an
 3 unregulated business, as opposed to another
 4 subsidiary that may have regulated business in
 5 it. By regulated, I mean regulated as a public
 6 utility.
 7 Q. Are there any examples of that within the
 8 parent-subsidiary relationships?
 9 A. Well, you have Northwestern Corporation, which
 10 is the public utility, and the entities that
 11 are below it, most of them are not regulated --
 12 are not public utilities, so they're not
 13 regulated as a public utility. They may be
 14 regulated in some other fashion, but not
 15 regulated as public utilities.
 16 Q. And the corporate structure of Northwestern
 17 Corporation could be reversed, could it not?
 18 All of its public utility activities could be
 19 put in subsidiaries, all of its regulated
 20 public utilities aspects put in subsidiaries,
 21 and all its nonregulated business in the
 22 parent?
 23 A. I guess there's all sorts of possibilities.
 24 Q. Sure. Now, with respect to Northwestern
 25 Corporation, do the subsidiaries of the company

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1 maintain the monuments of independence that
 2 typically go with corporations or LLCs, boards
 3 of directors, regular meetings, separate
 4 minutes, so forth?
 5 A. Yes, they do.
 6 Q. And they report annually to the Secretaries of
 7 State or whomever, whatever name is given? I
 8 think it's a different name in Delaware. It's
 9 not Secretary of State. It's the Chancellor or
 10 something, isn't it, Chancellor of
 11 corporations?
 12 A. The entities report to the governing body
 13 they're supposed to report to.
 14 Q. For each state.
 15 A. Right.
 16 Q. And the way this organization is set up in
 17 Northwestern Corporation, management decisions,
 18 operational management decisions for the
 19 subsidiaries are made essentially by the same
 20 group of people. Are they not?
 21 A. I don't know what you mean by that.
 22 Q. Well, as you've shown me on your list of
 23 officers and directors, Michael J. Hanson, the
 24 chief executive officer of Northwestern
 25 Corporation, is also the chief executive

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1 officer of every subsidiary, is he not?
 2 A. No.
 3 Q. Are there some he isn't?
 4 A. Correct.
 5 Q. Which one?
 6 A. On the first page of Exhibit 1, for
 7 Northwestern Services Corporation, Michael
 8 Hanson is the chairman. Curt Pohl is the CEO.
 9 Q. I see. He's either the chairman or the
 10 president and chief executive officer or the
 11 principal across the first line of all the
 12 subsidiaries, is not?
 13 A. No, he's not. If you look at Page 2 of Exhibit
 14 1, Michael Hanson is not either a director or
 15 officer of Blue Dot Services, LLC, or Blue Dot
 16 Capital, LLC.
 17 Q. So save those two companies, he's the principal
 18 officer of all the rest? No, not Risk Partners
 19 Assurance either. He's not on that board
 20 either.
 21 A. Michael J. Hanson is not on the board or an
 22 officer of Risk Partners Assurance, which is on
 23 the last page of Exhibit 1.
 24 Q. So of all the subsidiaries, there are three
 25 that he's not a member of the board or an

1 officer or director of.
 2 A. Referring to Exhibit 1 --
 3 Q. Should we do it this way? The exhibit speaks
 4 for itself, I guess, doesn't it?
 5 A. It does.
 6 Q. Those subsidiaries that Mr. Hanson is not
 7 either a member of the board or a director of,
 8 there are other Northwestern employees who are
 9 members of the board or directors. Right?
 10 Those three.
 11 A. Can you repeat your question?
 12 Q. It wasn't very well phrased. Why don't I
 13 strike it and start over again. In fact, I
 14 think I'll just leave it alone.
 15 Do the subsidiaries, any of the
 16 subsidiaries of the company have separate
 17 payrolls?
 18 A. I don't recall that they do have separate
 19 payrolls now. At one time they did.
 20 Q. When was that one time?
 21 A. Well, when Expanets, Inc., was doing business,
 22 it had a separate payroll. When Blue Dot
 23 Services, Inc., was conducting business, it had
 24 a separate payroll.
 25 Q. Are there management services agreements or

1 contracts of that nature between Northwestern
 2 and the subsidiaries?
 3 A. I believe there are management services
 4 agreements that exist.
 5 Q. Tell me about those. Tell me what --
 6 characterize them, if you can. Typically what
 7 is a management service agreement, what is its
 8 purpose, and how are they written?
 9 A. Well, to the extent there is a management
 10 service agreement, it's essentially to govern
 11 the use of employees from one entity to another
 12 and to deal with the compensation related to
 13 the use of the services of those employees.
 14 That's typically the reason for them.
 15 Q. The management service agreement then saves the
 16 necessity of separate payrolls.
 17 A. It may. It may not.
 18 Q. What other arrangements are there between the
 19 companies by way of contract to deal with
 20 management, governance, finance and so forth?
 21 A. I'm not certain I know what you mean, other
 22 than management services agreement that I
 23 mentioned before.
 24 Q. For example, if Northwestern Services
 25 Corporation needs cash, it obviously has access

1 to Northwestern Corporation's cash. Right?
 2 A. I don't know what you mean by "access to
 3 Northwestern's cash."
 4 Q. Needs money. If it borrows money from its
 5 parent corporation, Northwestern, how is that
 6 handled?
 7 A. I don't have personal knowledge of how that's
 8 handled.
 9 Q. Are there notes and security agreements and
 10 financing statements filed if there's an
 11 interchange of money between Northwestern
 12 Services Corporation and Northwestern
 13 Corporation?
 14 A. Whatever is necessary to document the transfer
 15 of funds, as performed. Northwestern Services
 16 Corporation is managed in that way.
 17 Q. Mr. Bird told me you try, as best you can, to
 18 have a single bank, US Bank. Obviously, as we
 19 discussed in Mr. Bird's deposition, it's
 20 difficult these days to define where money is,
 21 because money is essentially electrons and book
 22 entries these days.
 23 But if there is a need to segregate
 24 Northwestern Services Corporation funds from
 25 Northwestern Corporation funds, is that done

1 through bookkeeping, or is it done in the old
 2 style? Are there notes that would cover loan
 3 transactions back and forth? Are there
 4 financing statements and security agreements?
 5 A. Well, you're referring to financing and
 6 security agreements. They obviously have a
 7 specific purpose. I don't know whether you
 8 know of some reason they would need to have
 9 those.
 10 Q. Well, do you?
 11 A. Well, I mean, as I mentioned before, whatever
 12 is necessary to show the transfer of the funds,
 13 as carried out by the finance department.
 14 Q. And to maintain the corporate independence?
 15 A. I don't know what you mean by "and to maintain
 16 the corporate independence." You asked about
 17 transfer of funds, and I told you whatever the
 18 finance department needs to show the transfer
 19 of funds between the corporation. Northwestern
 20 Corporation and Northwestern Services
 21 Corporation is done by the finance department.
 22 Q. You know about piercing the corporate veil.
 23 You know what I'm talking about when I talk
 24 about that. Don't you?
 25 A. I understand the concept of piercing the

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1 corporate veil.
 2 Q. And you know that South Dakota and most other
 3 states in the Union have certain tests for
 4 whether or not you can pierce the corporate
 5 veil?
 6 A. I understand there are tests.
 7 Q. Do you know what those tests are?
 8 A. I have a vague recollection of what the tests
 9 are.
 10 Q. In a general way you know what they are?
 11 A. In a general way.
 12 Q. One of those is establishing and maintaining
 13 separate chains of finance, separate
 14 bookkeeping. Not commingling or intermingling
 15 money between subsidiaries and parents without
 16 proper documentation. You know that?
 17 A. Well, I think that's your characterization of
 18 the test. I don't know if that is the correct
 19 characterization.
 20 Q. Why don't you characterize it for me then.
 21 A. I don't know what I'm characterizing.
 22 Q. Why don't you just tell me what you understand
 23 the rudiments of protecting against piercing
 24 the corporate veil to be. That's not a very
 25 well-phrased question to be. I'll strike it

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1 and start over again.
 2 You said you understood the concept of
 3 piercing the corporate veil. You understand
 4 there are certain tests imposed by the Courts
 5 in the United States that have to do with
 6 whether or not you can pierce the corporate
 7 veil between a subsidiary and a parent
 8 corporation?
 9 MR. GERDES: Objection. Excuse me. It's
 10 not relevant to the subject matter of the
 11 proceeding that we are involved in.
 12 Q. You can answer.
 13 A. Yes. I understand there is a concept called
 14 piercing the corporate veil.
 15 Q. As general counsel at Northwestern Corporation,
 16 what steps do you and your general counsel's
 17 office take to assure corporate independence of
 18 the various subsidiaries of the corporation?
 19 MR. GERDES: Same objection.
 20 A. Well, I don't know to the extent I can answer
 21 that. I'm not here to waive attorney-client
 22 privilege of the client, since the client
 23 hasn't agreed to waive the attorney-client
 24 privilege.
 25 Q. Are you telling me you're not going to answer?

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1 A. I told you I can't waive the attorney-client
 2 privilege.
 3 Q. So you're telling me you are not going to
 4 answer my question?
 5 A. I told you I can't waive the attorney-client
 6 privilege. If you ask me a question which I
 7 don't have to get into the attorney-client
 8 privilege, I can answer that question, just
 9 like you've asked before, factual questions
 10 about the entities.
 11 Q. Do you maintain -- does the company maintain
 12 separate bookkeeping systems for its
 13 subsidiaries?
 14 A. The finance department keeps the books and
 15 records. They will be able to respond to you
 16 as to what books and records they keep.
 17 Q. So is your answer that you don't know?
 18 A. My answer is the finance department keeps the
 19 books and records, and they'll be able to
 20 respond to what books and records they keep.
 21 Q. Are separate minutes kept for the meetings of
 22 each of the subsidiaries of their boards of
 23 directors?
 24 A. Separate minutes are kept for the entities that
 25 are corporations.

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1 Q. And are meeting minutes kept for the meetings
 2 of the LLCs' board of managers?
 3 A. There is no board of managers, but there are --
 4 the LLCs, as I understand it, are not required
 5 to keep minutes. So the LLC keeps whatever it
 6 needs to keep that's required by the state of
 7 incorporation.
 8 Q. Are there instances where there are financial
 9 transactions that take place between the
 10 subsidiaries of the corporation and the parent
 11 and/or between the subsidiaries?
 12 A. I believe there are financial transactions that
 13 take place.
 14 Q. Are loans made?
 15 A. I don't know if there's any -- I don't believe
 16 there are any loans made.
 17 Q. If a subsidiary requires capital and it
 18 acquires that capital from the -- strike that.
 19 If a subsidiary requires money and it
 20 acquires that money from the parent, how is
 21 that documented?
 22 A. The documentation is handled by the finance
 23 department.
 24 Q. So you don't know the details of that.
 25 A. I don't know the details of the finance

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1 department's documentation. If there's a
 2 requirement that the transfer would require
 3 some legal documentation, then we would perform
 4 that.
 5 Q. In Mr. Bird's deposition he said there were
 6 discussions between the company and the South
 7 Dakota Public Utilities Commission with respect
 8 to the grossing up concept that was employed in
 9 the development of the Petition for Declaratory
 10 Ruling. Did you participate in those
 11 discussions?
 12 A. I don't recall participating in those
 13 discussions.
 14 Q. Do you know of any discussions between the
 15 company and the Public Utilities Commission?
 16 A. Sure. There are lots of discussions.
 17 MR. GERDES: Let me interject. I'll
 18 object to the form of the question. Are you
 19 talking about the staff of the Commission or
 20 the Commission itself?
 21 MR. TAYLOR: I said the Public Utilities
 22 Commission.
 23 Q. Do you know of any such discussions?
 24 A. There's lots of discussions that go on with the
 25 staff of the South Dakota Public Utilities

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1 Commission.
 2 Q. I'm talking about within reference -- my
 3 reference is to the grossing up concept. Do
 4 you know of any of those discussions?
 5 A. I understand there were discussions with the
 6 staff on the exhibit ---not on the exhibit, but
 7 on the -- let me rephrase that.
 8 I don't remember whether there were
 9 discussions between Northwestern Corporation
 10 and the staff of the South Dakota PUC on the
 11 revenue issue, other than conversations,
 12 passing conversations that I had with some
 13 staff members -- not staff members, but a staff
 14 member of the South Dakota PUC.
 15 Q. Who did you have the conversation with?
 16 A. With John Smith.
 17 Q. When did you have that conversation?
 18 A. Maybe a couple months ago.
 19 Q. Before the Petition for Declaratory Ruling was
 20 filed or after?
 21 A. I don't recall.
 22 Q. Where did the conversation take place?
 23 A. It either was on the phone or in Pierre.
 24 Q. You don't remember?
 25 A. I don't remember whether it was on the phone or

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1 in person.
 2 Q. What prompted the conversation?
 3 A. My interest in what the staff's position was on
 4 the interpretation of the statute.
 5 Q. So you made the inquiry?
 6 A. I don't recall whether I -- I made the
 7 inquiry. I'm pretty sure I made the inquiry.
 8 Q. Did you initiate the inquiry?
 9 A. I don't know what you mean. Did I pick up the
 10 phone and call them?
 11 Q. Yes, or travel to Pierre, or called and made an
 12 appointment and then traveled to Pierre.
 13 A. I don't remember.
 14 Q. Do you have a mental picture of the
 15 conversation?
 16 A. I don't.
 17 Q. What did you say and what did he say, as best
 18 you recall?
 19 A. I think I asked, "Is there any decisions or
 20 staff interpretations on how that statute is
 21 interpreted?" I think he said, "There is
 22 not."
 23 Q. Did you talk about the meaning of the statute?
 24 A. No. I believe I asked if there was anything --
 25 as I said, if there was any decisions or

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1 interpretations.
 2 Q. Fairly short conversation?
 3 A. It was.
 4 Q. His answer was no?
 5 A. His answer was no, I believe.
 6 Q. Is he familiar with the issue when you engaged
 7 him in the conversation?
 8 A. It would be my recollection he was familiar
 9 with the issue.
 10 Q. Had you had any correspondence or calls,
 11 discussions with him prior to having this
 12 conversation that would make him familiar with
 13 the issue?
 14 A. I don't recall.
 15 Q. You don't remember whether you did or not?
 16 A. I have not sent any correspondence to
 17 Mr. Smith, other than an exchange of drafts of
 18 a document related to the FERC proceeding. I
 19 don't think I had any -- I know I haven't sent
 20 him any other documents.
 21 Q. As relates to this deal.
 22 A. As it relates to this docket, right.
 23 Q. How did the subject come up? What stimulated
 24 you to make the call in the first place?
 25 A. I wanted to know what the meaning of the

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1 statute meant.
 2 Q. You're reading the statute and thought, "Well,
 3 I'll call Smith."
 4 A. He is the general counsel of the South Dakota
 5 PUC. I assumed he might know whether there are
 6 any unpublished interpretations or decisions
 7 that would be of use to analyze the statute.
 8 Q. What were the circumstances that led to you --
 9 strike that.
 10 Did you participate in the decision to
 11 file a Petition for Declaratory Ruling?
 12 A. Yes.
 13 Q. Had you researched the issue of the definition
 14 of "gross revenue" prior to filing that
 15 Petition?
 16 A. I did not personally.
 17 Q. Who did?
 18 A. I asked our outside counsel to do that.
 19 Q. Mr. Gerdes?
 20 A. Yes.
 21 Q. Do you recall when you gave him that
 22 assignment?
 23 A. I don't recall. It was obviously prior to the
 24 filing of the Declaration, the document.
 25 Q. Do you recall whether your discussions with

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1 Mr. Smith were before you filed or after?
 2 A. I don't recall.
 3 Q. Just don't know?
 4 A. Yeah, I don't know.
 5 Q. Do you keep a known log?
 6 A. No, I don't.
 7 Q. Did you talk to anybody else, besides Mr. Smith
 8 and Mr. Gerdes, about the definition of gross
 9 revenue?
 10 A. I've talked to a lot of people about the
 11 definition of gross revenue.
 12 Q. Any other lawyers on your staff?
 13 A. I don't believe so.
 14 Q. Did you mount a research effort inside the
 15 company to determine the meaning of the term
 16 "gross revenue"?
 17 A. I did not.
 18 Q. Did anybody on your staff research it?
 19 A. Not to my knowledge.
 20 Q. Were there any meetings or discussions among
 21 you and Mr. Kliever or others about how to
 22 report gross revenue for purposes of the
 23 Petition for Declaratory Ruling?
 24 A. There was no discussions amongst me or
 25 Mr. Kliever on how to report gross revenues.

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1 Q. How about on how to define gross revenues for
 2 purposes of reporting?
 3 A. I don't believe there was any -- the
 4 conversations we had about how to define gross
 5 revenues for purposes of reporting it.
 6 Q. You and Mr. Kliever, we're talking about.
 7 A. Right.
 8 Q. Anybody else? Did you have any conversations
 9 on that subject with anybody else besides Dave?
 10 A. Well, I don't agree with your assumption. I
 11 don't recall any conversations with anybody on
 12 how to define gross revenues for purposes of
 13 reporting it.
 14 Q. Did you have any conversations with anybody,
 15 besides Mr. Smith and Mr. Gerdes, on the
 16 general subject of gross revenue and how it
 17 would be used, defined with respect to the
 18 Petition for Declaratory Ruling?
 19 A. Yes.
 20 Q. Who?
 21 A. I don't recall all the people I talked to about
 22 how the definition of gross revenue under the
 23 South Dakota statute is defined, lack of
 24 definition, how it's interpreted.
 25 Q. Tell me the persons with whom you had those

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1 conversations that you do recall.
 2 MR. GERDES: I'll object to this line of
 3 questioning. You're starting to get into
 4 attorney-client privilege, I think.
 5 MR. TAYLOR: Not until I ask about
 6 conversations with you.
 7 MR. GERDES: The corporation is his
 8 client.
 9 Q. Answer the question, please.
 10 A. As I said, there were a number of people I
 11 talked to. It could have been anybody from
 12 Mike Hanson, Brian Bird, Kendall Kliever. Also
 13 people at Babcock & Brown Infrastructure,
 14 Limited, their lawyers.
 15 Q. Let's start at the beginning. You told me
 16 there were -- tell me who you recall talking to
 17 this issue. Bird. Do you recall talking to
 18 Mr. Hanson about it?
 19 A. Yes.
 20 Q. Who else?
 21 A. As I said, Mr. Kliever.
 22 Q. Tell me what you talked to Mr. Hanson about.
 23 A. I cannot waive the attorney-client privilege.
 24 Q. You believe those conversations are privileged?
 25 A. Yes, I do.

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1 Q. He was asking you for legal advice?
 2 A. He was asking me for legal advice.
 3 Q. And as to Mr. Kliewer?
 4 A. Same conversations, same position.
 5 Q. Asking you for legal advice, and so any
 6 conversation you had with him about that you
 7 would consider to be privileged?
 8 A. Yes, I would.
 9 Q. Who else?
 10 A. Bird.
 11 Q. Same with Mr. Bird?
 12 A. Yes.
 13 Q. Who else within the company?
 14 A. I don't recall other people.
 15 Q. And you said you spoke to persons at Babcock &
 16 Brown about this?
 17 A. Yes.
 18 Q. Who would that be?
 19 A. That would have been their lawyer, Nancy Zajac.
 20 Q. What conversation did you have with her?
 21 A. General conversations pertaining to the statute
 22 interpretation.
 23 Q. Analysis and interpretation of the statute?
 24 A. Right.
 25 Q. When did those conversations take place?

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1 A. Took place this year.
 2 Q. Don't remember?
 3 A. I couldn't give you specific dates, no.
 4 Q. Before or after the filing of the Petition for
 5 Declaratory Ruling?
 6 A. It could have been before. It could have been
 7 after.
 8 Q. Or both?
 9 A. Or both.
 10 Q. The Public Utilities Commission filed an
 11 application, some discovery documents that the
 12 company responded to. Did you supervise the
 13 response? Did that cross your desk? Are you
 14 ultimately responsible for those responses?
 15 A. Yes.
 16 Q. In what's been marked Bird Exhibit 2, which is
 17 the First Staff Data Request, there's a
 18 contract called a Gas Supply Sales and
 19 City-Gate Management Services Agreement dated
 20 '97 between Northwestern Energy Corporation
 21 and Northwestern Public Service Company. I'll
 22 have you look at that for a moment. Can you
 23 tell me what that is?
 24 A. It appears to be, as the title says, Gas Supply
 25 Sales and Management Services Agreement.

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1 Q. Can you tell me how that's relevant to the
 2 questions that were asked in that -- the
 3 response to the question that was asked?
 4 A. Not without waiving attorney-client privilege.
 5 I cannot waive attorney-client privilege.
 6 Q. So you believe it's your understanding of the
 7 relevance of that document to a question posed
 8 is privileged?
 9 A. It's either privileged or attorney work
 10 product.
 11 Q. What is that agreement about?
 12 A. As I said, it's titled the Gas Supply Sales and
 13 Management Services Agreement.
 14 Q. Are you familiar with it?
 15 A. I am not.
 16 Q. So you don't know what it's about.
 17 A. I said I'm not familiar with it.
 18 MR. TAYLOR: Thanks. That's all the
 19 questions I have. You have the right to read
 20 and sign, or you can waive.
 21 THE WITNESS: I'll read and sign.
 22 MR. GERDES: I'll state for the record
 23 that it is agreed between the parties taking
 24 the deposition that the contents of the
 25 deposition will be deemed confidential until

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1 we've had an opportunity to look at it and
 2 suggest to counsel what parts, if any, we
 3 consider to be confidential. Would that be the
 4 agreement?
 5 MR. TAYLOR: That's agreeable.
 6 (Witness excused)
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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

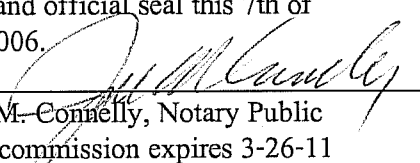
3 COUNTY OF MINNEHAHA)

4 I, Jill M. Connelly, Court Reporter
5 and Notary Public within and for the State of
6 South Dakota:

7 DO HEREBY CERTIFY that the witness
8 was first duly sworn by me to testify to the
9 truth, the whole truth, and nothing but the
10 truth relative to the matter under
11 consideration, and that the foregoing pages
12 1 - 80, inclusive, are a true and correct
13 transcript of my stenotype notes made during
14 the time of the taking of the deposition of
15 this witness.

16 I FURTHER CERTIFY that I am not an
17 attorney for, nor related to the parties to
18 this action, and that I am in no way interested
19 in the outcome of this action.

20 In testimony whereof, I have hereto
21 set my hand and official seal this 7th of
22 November, 2006.

23 
24 Jill M. Connelly, Notary Public
25 My commission expires 3-26-11